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Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

HARRY MICHAEL BOWER,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari to the Illinois Appellate Court

PETITION FOR WRIT OF CERTIORARI

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37 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Illinois Court of Appeals may ignore those general boundaries as to what society will accept as reasonable regarding privacy in a motor vehicle, by denying Petitioner standing to raise Fourth Amendment objections to contest a search of the trunk of the vehicle, where the petitioner was a legitimate driver of a rental vehicle and where the person obtaining the rental did not agree to a boilerplate term of the rental contract barring "unauthorized drivers," when the court ruled on this "question of first impression."

    a. Whether the driver of a rented vehicle has a "legitimate possessory interest" with its accompanying expectation of privacy, and therefore standing to move to suppress the fruits of an unlawful search of the trunk of the vehicle, where he adduced unrebutted evidence that he had the permission of the lessee to use the vehicle.

    b. Whether the state can deny one's right to a full and fair opportunity to assert their Fourth Amendment rights by placing contractual terms designed for risk management above one's reasonable expectation of privacy, where the driver of a rental vehicle had the permission of the renter to use the vehicle.

2. Whether the Illinois courts should have found petitioner had standing to raise his Fourth Amendment objections to the search and seizure of the sealed boxes in the trunk of the rental vehicle, where petitioner asserted an ownership interest over them.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Harry Michael Bower respectfully prays that a writ of certiorari issue to review the judgment of the Appellate Court of Illinois, Third Judicial District, entered in this proceeding on September 12, 1997.

OPINIONS BELOW

The opinion of the circuit court denying Petitioner standing to raise his Fourth Amendment claims is unreported.

The opinion of the Appellate Court of Illinois, Third Judicial District, affirming that decision and Bower's conviction is reproduced *infra* at App. 1. No petition for rehearing was filed. The case is reported at: 291 Ill. App. 3d 1077; 685 N.E.2d 393; 226 Ill. Dec. 290 (1997).

The order of the Illinois Supreme Court denying discretionary leave to appeal is reproduced *infra* at App. 11. That order is reported at: 175 Ill.2d 533; 689 N.E.2d 1141. That court's order denying Petitioner's motion for leave to file a motion for reconsideration of the denial of leave to appeal is reproduced *infra* at App. 12.

JURISDICTIONAL GROUNDS

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a). The judgment of the Appellate Court of Illinois, Third Judicial District, was entered on September 12, 1997. The Supreme Court of Illinois denied leave to appeal by order entered on December 3, 1997. Within the time frame for seeking a writ of cer-

tiorari from this Court, on or before March 3, 1998, Petitioner moved an Associate Justice of this Court for leave to extend the time for filing his Petition for Writ of Certiorari to and including April 17, 1998. See Rules of the Supreme Court, Rules 13 and 22. This motion was granted in full by Mr. Justice Stevens on March 3, 1998, and a copy of a letter from Melissa A. Blalock, Assistant Clerk to this Court confirming same is reproduced *infra* at App. 14.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, except upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

United States Constitution, Amendment XIV:

. . . nor shall any state deprive any person of life, liberty, or property, without due process of law . . .

STATEMENT OF THE CASE

This case arises from the failure of Illinois—either at trial,[1] on direct appeal,[2] or on leave to appeal,[3] to recognize that Harry Michael Bower, driving a vehicle rented by another with the other's permission, possessed a privacy interest sufficient to require Illinois to afford him a full and fair opportunity to raise and adjudicate his Fourth Amendment claim that the search of the vehicle by state police was illegal.

On July 23, 1995, petitioner attempted to rent a car from Hertz at the San Diego, California airport. Hertz would not rent to him because he was driving on an Arizona traffic ticket. (App. 2) So petitioner asked his friend, Gary DeGraff, to rent the car for him. He told DeGraff he wanted to visit family in Illinois and that he would stop on the way to visit friends. Nothing was said about marijuana. (App. 2)

DeGraff then rented the car from Hertz with his own driver's license and credit card with petitioner standing

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[1] Counsel moved to suppress the contraband found in the trunk of the rental vehicle and the trial court found, as a "matter of law," that "Mr. Bower has no standing to complain about the search of the vehicle . . . ." (App. 3; R. 125) ("R." refers to the transcript of proceedings before the appellate court.)

[2] On direct appeal, petitioner urged that he possessed standing to move to suppress evidence seized during an inventory search of the trunk of the Hertz rental vehicle he was driving with the permission of the renter. (App. 4)

[3] Leave to appeal was timely requested; it was denied on December 3, 1997. (App. 11) Petitioner's motion for leave to file a motion for reconsideration of denial of leave to appeal was also denied.

by his side. Petitioner agreed to reimburse DeGraff for the cost of the car rental. (App. 2)

A standard Hertz rental agreement was presented to DeGraff which required him to circle and/or initial various provisions indicating that he accepted or declined. DeGraff was aware of the preprinted "boilerplate" provision which read: "No 'additional unauthorized drivers' without Hertz' prior written approval." This provision was neither explained to DeGraff nor was he asked to sign or initial it, though he had done so at other places on the agreement. If asked to initial this provision, DeGraff testified he would have refused and gone to another renter. (R. 74)

On July 26, 1995, petitioner, while driving the vehicle, was stopped around 12:40 p.m. on Interstate 88 near Rock Falls, Illinois. (App. 2) He had been driving cautiously at the posted limit and signaling when he changed lanes because: (1) he knew a state trooper was following him; (2) he was driving on a ticket;[4] and (3) he had marijuana in the trunk. The trooper pulled him over for allegedly failing to signal while changing lanes. When asked for his driver's license, petitioner gave the trooper the Arizona ticket he was driving on. (App. 3) The trooper was leaning inside the car on the driver's side while his partner was doing the same on the passenger side. When asked for the car's registration, petitioner gave him the rental agreement. Because petitioner was not named on the rental agreement, Hertz was

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[4] The State implicitly conceded that Petitioner could legally drive a vehicle while in possession of the Arizona ticket in lieu of his driver's license.

contacted and requested the vehicle be impounded. (App. 3) The contract's "vehicle return date" had not expired. Petitioner was issued a "warning ticket" but, according to the appellate court, was not arrested. (App. 3) However, he was never told that he was free to leave (R. 46). Instead, he was taken to a gas station in Rock Falls and the troopers recovered two boxes containing marijuana from the trunk of the Ford Taurus.

At a hearing on petitioner's motion to suppress evidence, the trial court found the "no unauthorized drivers" provision to be operative despite the absence of DeGraff's initials next to it. The trial court ruled that the "driver of a rented car that has not been rented by that driver has no reasonable expectation of privacy in the car." (R. 127; State's brief and argument in the appellate court, Case No. 3-96-0903, p. 8) The appellate court, in affirming the trial court's ruling that petitioner lacked standing to bring a motion to suppress, held that "the entrustment by a lessee of a rental vehicle to a third party is insufficient to create a reasonable expectation of privacy in that third party where that third party knows the entrustment is without the authority of the vehicle's owner." (App. 10) Though that court was aware that petitioner had claimed a possessory interest in the boxes in which marijuana was found, it did not base any part of its decision on this factor. No ruling on the merits of the motion to suppress was made.

ARGUMENT

1. SOCIETY PLACES A REASONABLE EXPECTATION OF PRIVACY IN A PERSON DRIVING A VEHICLE WITH THE PERMISSION OF THE RENTER OR THE OWNER OF SAID VEHICLE, AND THE ILLINOIS APPELLATE COURT MAY NOT IGNORE THAT IN DENYING STANDING TO ASSERT A VIOLATION OF PETITIONER'S FOURTH AMENDMENT RIGHTS.

In order to obtain the conviction of Harry Michael Bower and send him to prison, it was necessary to deny him the opportunity for any hearing on his contention that the state police violated his Fourth Amendment rights in conducting a warrantless inventory search of his car, including its trunk and there seizing and searching petitioner's property found in that trunk. Every recent federal court to consider this question, where the driver had permission to operate the vehicle, has held the driver had standing to raise his Fourth Amendment arguments.

To countenance the failure of the Illinois appellate court to look to the factors delineated by this Court in *Rakas v. Illinois*, 439 U.S. 128 (1978), and to permit the substitution of a questionable contract analysis,[5] means

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[5] The reviewing court found the "no unauthorized drivers" provision controlling here though not accepted by the renter by initialling or circling it, citing generally to the Illinois case of *Leon v. Max E. Miller & Son*, 23 Ill. App. 3d 694, 320 N.E. 2d 256 (1974). But nowhere in that case does any party or the court raise or consider the issue here: the requirement of specific assent to multiple provisions of a contract. The closest *Leon* comes to the situation here is its holding that the rule of

(continued...)

that courts may now dispense with the *Rakas* analysis and substitute long rejected property concepts in the place of a reasoned consideration of privacy rights, effectively resurrecting the unbridled authority of the general warrant, "placing the liberty of every man in the hands of every petty officer."[6] Such a holding is in conflict with prior decisions of this Court and, if allowed to stand, the decision in this case would encourage gross violations of Fourth Amendment rights and it requires review by this Court.

A. The Importance of the Issue

Inextricably involved here is one of the most frequent and fundamental decisions made by adult Americans, to permit persons other than the renter of a rental vehicle to drive it. Under the appellate court's decision, Americans driving a car with the permission of the renter can have no protectable privacy interest if not named as an "authorized driver" on the rental contract. But this begs reality. Often those to whom the vehicle is lent are not present at the time of renting, when authorized drivers may be named. Thus, wives, husbands, and children have no protectable privacy interest if not named in the

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[5] (...continued)
construction of *ejusdem generis* is not applicable to interpret the terms "solicited, negotiated, and administered" appearing in the contract there under review. This is so tangential as to not even be persuasive as to the court's ruling. Moreover, the State never argued for that construction nor cited any authority.

[6] *Stanford v. Texas*, 379 U.S. 476, 481 (1965), quoting from *Boyd v. United States,* 116 U.S. 616, 625 (1886).

contract. But the contract provision is not designed as a waiver of one's privacy rights, it is merely a risk management device to limit liability. This case is not a personal injury or other tort action in which Hertz stands as an insurer. It is a case about one's right to avail themselves of the protections of the Fourth Amendment.

If allowed to stand, the decision in this case leaves the Fourth Amendment in Illinois as "little more than rhetoric."[7]

B. Conflicts with Prior Decisions of this Court

This Court has determined that the question as to whether a particular person has standing to object to the search of a vehicle is grounded on the inquiry as to whether that search intruded upon the person's "reasonable expectation of freedom from governmental intrusion." *Mancusi v. DeForte*, 392 U.S. 364 (1968).

In the seminal decision of *Rakas v. Illinois, supra,* this Court held that passengers in a rented car who asserted neither a property nor a possessory interest in the automobile searched nor an interest in the property seized lacked standing to challenge the search of the glove compartment or the back seat. But this Court found the driver did have standing. Here, petitioner, the driver of a rented car, had a legitimate possessory interest in the vehicle; the renter testified that he lent the vehicle to petitioner. And petitioner asserted an interest in the contraband discovered. Under *Rakas* he clearly had

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[7] *Bivens v. Six Unidentified Agents*, 403 U.S. 388, 415 (1971) (Burger, C.J., dissenting opinion).

standing. The Illinois court's contractual analysis (App. 8), that the fact that the renter did not initial the "no unauthorized drivers" line (while so indicating acceptance or rejection of other items), would cast Fourth Amendment jurisprudence back to pre-*Katz* days, where the mechanistic application of property rights took precedence over one's reasonable expectations of privacy.[8]

C. A Substantial Unresolved Constitutional Question

Where the driver of a rental vehicle is in lawful possession thereof, to hold such a person has no standing to object to a warrantless search of the vehicle, or of his property in its trunk, encourages officers to act outside the law because there are no longer constraints upon them.

The Illinois appellate court found that the question presented was one of "first impression" for it, but it decided that question on narrow property and contract principles and ignored the two-part expectation of privacy test.

The sheer impact of the Illinois court's holding in denying Fourth Amendment protection on the large number of users of rental vehicles, using those vehicles with the permission of the renters, in denying them Fourth Amendment protections, raises a substantial constitutional question.

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[8] *Katz v. United States*, 389 U.S. 347 (1967).

D. The Circuits Are in Conflict

In *United States v. Kye Soo Lee*, 898 F.2d 1034 (1990), in a case factually indistinguishable from the case before this Court, the Fifth Circuit found the driver of a rental vehicle who was driving with the permission of the renter had standing to raise a Fourth Amendment objection to a search. On the other hand, in *United States v. Wellons*, 32 F.3d 117 (1994), the Fourth Circuit held to the contrary. The Tenth Circuit's decision in *United States v. Jones*, 44 F.3d 860 (1995), can be read to suggest that if the renter had testified that he had given the driver permission to drive the Budget rental car, she might have been able to establish a legitimate expectation of privacy. *Id.* at 871. However, the court then cited to its earlier and criticized decision in *United States v. Obregon*, 748 F.2d 1371 (1984), which is consonant with *Wellons*, *supra*.

In a very similar rental car case, the Eleventh Circuit held that the driver indeed had standing under *Rakas, supra*. There the Budget car rental contract required the defendant to return the vehicle by January 20, 1996. He did not. When he, the defendant/driver, was stopped in the vehicle by police on January 24, 1996, the arresting officers contacted Budget who informed them that it planned to tow the car pursuant to the repossession terms of the contract. The court concluded there was little serious dispute as to the defendant's "subjective expectation of privacy" in the rental car. Turning to the "objective reasonableness" of the defendant's expectation of privacy, the court observed:

> Although fact-specific, case law has established some general boundaries as to what society will

> accept as reasonable regarding privacy in a motor vehicle. A passenger usually lacks a privacy interest in a vehicle that the passenger neither owns nor rents, regardless of whether the driver owns or rents it. *See, e.g., Rakas [v. Illinois]*, 439 U.S. [128,] at 130, 140, 148-49, 99 S.Ct. [421] at 422, 428-29, 432-33; *United States v. Eylicio-Montoyo*, 70 F.3d 1158, 1162 (10th Cir. 1995). On the other hand, a driver using a vehicle with the permission of an absent owner has been found to possess a reasonable expectation of privacy therein. *See United States v. Garcia*, 897 F.2d 1413, 1416-18 (7th Cir. 1990).[9] At least one court has extended this privacy right to a driver who had the absent renter's permission. *See United States v. Kye Soo Lee*, 898 F.2d 1034, 1038 (5th Cir. 1990).[10]

United States v. Cooper, 133 F.3d 1394, 1998 U.S. App. LEXIS 1031 (11th Cir.). The court found that the failure of the rental company to have begun repossession provided "additional indicia of reasonableness" of the driver's expectation of privacy, noting that one's reasonable expectation of privacy does not evaporate one minute after the return date and time on the rental contract. Rather, the key factor was if the rental company had actually commenced repossession proceedings.

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[9] *Accord United States v. Hargrove*, 647 F.2d 411, 413 (4th Cir. 1981) (driver lacks a reasonable expectation of privacy in a vehicle that he or she stole).

[10] The Fifth Circuit later distinguished *Kye Soo Lee* and denied standing to a driver using a rental car with only the passenger's permission and not that of the renter or rental company. *United States v. Riazco*, 91 F.3d 752, 753-55 (5th Cir.), cert. denied, 117 S.Ct. 497, 136 L.Ed.2d 389 (1996).

Here, the renter's testimony below provided that "additional indicia of reasonableness." By way of comparison, a defendant/driver who failed to call the renter as a witness and failed to testify himself that he had permission to drive, was found to have failed to establish standing. *United States v. Muhammad*, 58 F.3d 353, 355 (8th Cir. 1995).

As Professor LaFave has noted in his treatise SEARCH AND SEIZURE (3d ed. 1996), the Fourth Amendment is the only constitutional provision rooted in the American and English experience with warrantless searches. (§1.1(a), p. 3) Here, the Illinois appellate court relied on a questionable reference to contract law to subvert the Fourth Amendment, ruling that "Basic principles of contract hold that a person who signs a contract is agreeing to the terms in their entirety regardless of whether he makes a special indication on each individual provision" (App. 8), and overruled Fourth Amendment privacy rights.[11]

2. STANDING EXISTED WHEN PETITIONER ASSERTED AN OWNERSHIP INTEREST IN THE SEIZURE OF HIS PROPERTY.

Even if petitioner has not established standing by showing a reasonable expectation of privacy in the vehicle, he still may do so by virtue of the fact that he admitted that effects taken from the car's trunk by the police belonged to him (App. 1). Thus, in *United States v. Lisk*, 522 F.2d 228 (7th Cir. 1975), in an opinion by Justice Stevens, the court concluded that where five

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[11] See footnote 5, *supra*.

days prior to the search of Hunt's car the defendant placed an explosive device in the trunk and told Hunt to keep it for him until he asked for it, that defendant's property interest in the device gave him no privacy right in the car and thus no standing to object to the search of the car but that he did have standing to object to the search of the container itself. This Court took note of *Lisk* in *United States v. Salvucci*, 448 U.S. 83 (1980).

Here, petitioner's interest in the property taken from the trunk of the rental vehicle was not remote. The property was not abandoned. And *Rakas* does not conflict because, as this Court emphasized, the defendants there asserted no "interest in the property seized."

For these reasons, certiorari should be granted to review the failure of the court below to even examine standing in light of petitioner's admission of an ownership interest in the seized property.

CONCLUSION

For the reasons above stated, petitioner prays that a writ of certiorari issue to review the judgment of the Appellate Court of Illinois, Third Judicial District, entered in this proceeding.

Respectfully submitted,

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APPENDIX

App. 1

(Filed September 12, 1997)

No. 3-96-0903

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 1997

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court for the 14th Judicial Circuit Whiteside County, Illinois
Plaintiff-Appellee,	)	
v.	)	No. 95-CF-237
HARRY MICHAEL BOWER,	)	Honorable Timothy J. Slavin,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOMER delivered the opinion of the court:

The defendant, Harry Bower, was convicted of possession of cannabis with intent to deliver (720 ILCS 550/5 (West 1994)) and cannabis trafficking (720 ILCS 550/5.1 (West 1994)). He appeals the trial court's dismissal of his motion to suppress evidence seized during an inventory search of the Hertz rental car he had borrowed from the renter. The defendant admitted that the 62.5 pounds of cannabis found in the trunk of the car belong to him. The sole issue on appeal is whether the trial court erred in

finding that the defendant lacked standing to object to the search. We affirm.

FACTS

The Hertz rental car agency at the San Diego airport denied the defendant's rental application because he had an outstanding traffic ticket from Arizona. The defendant called his friend, Gary DeGraff, and informed him of the situation, explaining that he needed the car so he could visit his family in Illinois and friends along the way. DeGraff agreed to rent the car for the defendant using his own identification and credit card. Although the defendant was present at the time of the rental, DeGraff did not inform the Hertz agent that he was renting the car for the defendant's use. The defendant agreed to reimburse DeGraff for the expense of renting the car; however, he had not done so at the time of the suppression hearing.

The Hertz agent presented DeGraff with a standard form rental agreement and asked him to initial certain provisions which had been circled by the agent, including one pertaining to insurance coverage and a prohibition from driving into Mexico. According to his testimony DeGraff was aware of the provision which purportedly read: "no additional authorized operator without Hertz' prior written approval," but indicated that he was not asked to initial that specific provision. The defendant drove off in the rental car.

Two days later, the defendant was stopped by an Illinois State trooper on Interstate 88 near Rock Falls and issued a warning ticket for his alleged failure to signal during a lane change. When asked for his license and registration,

the defendant presented the Arizona traffic ticket and the Hertz rental agreement. Because the defendant was not named as either the renter of the vehicle or an authorized driver, the police contacted the security division of Hertz. Hertz requested that its vehicle be impounded because the defendant was not authorized to drive it.

The police did not arrest the defendant, but they informed him that the vehicle would be towed to Rock Falls at which time its contents would be inventoried. The police gave the defendant a ride to Rock Falls, and upon searching the vehicle, they found two cardboard boxes containing a large amount of cannabis in the trunk. The defendant admitted that the cannabis belonged to him.

The defendant filed a motion to suppress the evidence. After a hearing, the court found, as a matter of law, that the defendant had no standing to object to the search of the vehicle or its contents. The defendant was ultimately found guilty on both counts after a stipulated bench trial, and he was sentenced to a total of 9 years' imprisonment and assessed fines and costs of $136,844.00.

ANALYSIS

As previously noted, the sole issue raised on appeal is whether the trial court erred in finding that the defendant lacked standing to object to the search of the rental car that he was driving. Ordinarily, a trial court's ruling on a motion to suppress evidence will not be disturbed on appeal unless it is deemed to be against the manifest weight of the evidence. *People v. James*, 163 Ill. 2d 302, 310, 645 N.E.2d 195, 199 (1994). However, whether a defendant has standing to question an allegedly illegal

search or seizure is a question of law. *People v. Foskey*, 136 Ill. 2d 66, 76, 554 N.E.2d 192, 197 (1990). Therefore, the appropriate standard of review in the instant case is *de novo*. *People v. Froio*, 198 Ill. App. 3d 116, 120, 555 N.E.2d 770, 773 (1990); *People v. Graves*, 196 Ill. App. 3d 273, 276-77, 553 N.E.2d 810, 812 (1990).

The defendant argues that he presented sufficient evidence demonstrating that he had obtained a possessory interest in the rental car giving rise to a reasonable expectation of privacy. He contends that he was legitimately present in the car based upon his agreement with DeGraff. He asserts that the "no additional authorized drivers" language of the rental contract was not operative, and in any event, was not determinative of his standing to complain of an unlawful search of the car. Further, he argues that he demonstrated a subjective expectation of privacy which established his standing to object to the search.

The State asserts that although the defendant was the driver of the car, he had no legitimate expectation of privacy sufficient to allow him to contest its search because he was not listed as an authorized driver on the rental agreement which expressly prohibited unauthorized drivers from operating the car. The State also argues that even if the defendant had a subjective expectation of privacy, that expectation is not one which society is willing to recognize as reasonable. Despite the fact that both the defendant and DeGraff knew that the defendant was ineligible to rent the car from Hertz, the State asserts that they decided to engage in subterfuge to obtain the car for the defendant. As a matter of public

policy, the State argues that this court should affirm the trial court's decision.

We must decide whether a defendant in sole possession and control of a rental car entrusted to him by the renter, without the consent of the rental company, has standing to challenge a search of the car. The State cites two Illinois cases which are not particularly helpful to the issue at hand because they are clearly distinguishable on the facts. See *People v. McCoy*, 269 Ill. App. 3d 587, 646 N.E. 2d 1361 (1995) (none of the occupants of the rental car, including the defendant, could legally operate the car because none had a driver's license and there was no proof that any of them had any permission to use the rental car); *People v. Manikowski*, 186 Ill. App. 3d 1007, 542 N.E.2d 1148 (1989) (passenger not listed in the rental agreement had no standing to object to a search of the rental car in which he was traveling on a cross country trip). Although there are several federal cases which are instructive on this issue, we consider this a case of first impression in Illinois.

It is a fundamental principle of law that the fourth amendment protection against unreasonable governmental searches and seizures extends only to those individuals who have a "reasonable expectation of privacy" in the place searched or property seized. *People v. Johnson*, 114 Ill. 2d 170, 191, 499 N.E.2d 1355, 1364 (1986), citing *Rakas v. Illinois*, 439 U.S. 128, 143, 99 S. Ct. 421, 430, 58 L. Ed. 2d 387, 401 (1978). A defendant bears the burden of proving that he has standing to object to the search by demonstrating not only that he, personally, had an actual or subjective expectation of privacy in the place searched, but also that his expectation is one that society is willing

to recognize as reasonable. *Katz v. United States*, 389 U.S. 347, 359, 88 S. Ct. 507, 516, 19 L. Ed. 2d 576, 586 (1967).

Importantly, we note that a police officer's belief as to the defendant's possessory interest in the vehicle to be searched has no bearing upon the question of the defendant's standing to object to a search. W. LaFave, Search & Seizure §11.3 (e), at 181-82 (3d ed. 1996). Although the officer's belief and the reasonableness of it are of considerable significance if there is occasion to reach the merits and determine if the search was lawful, a person's standing depends upon his own legitimate expectation of privacy, independent of what the police believe or even the actual facts. W. LaFave, Search & Seizure §11.3 (e), at 182 (3d ed. 1996).

The question of whether a defendant has a reasonable expectation of privacy must be resolved based upon the totality of the circumstances in each case. *Johnson*, 114, Ill. 2d at 191-92, 499 N.E. 2d at 1364. Our supreme court has enumerated six factors to consider in making this determination, which include: (1) property ownership; (2) possessory interest; (3) prior use; (4) legitimate present; (5) ability to control or exclude others' use; and (6) subjective expectation of privacy. *Johnson*, 114 Ill. 2d at 191-92, 499 N.E.2d at 1364. The defendant's subjective expectation of privacy, therefore, is but one factor to be considered.

The defendant in this case clearly had no property ownership interest in the vehicle which was owned by Hertz and leased to DeGraff. Although the defendant was in exclusive possession of the vehicle at the time of the search, and therefore, had the ability to control its use, his presence in the vehicle as its operator was not legiti-

mate. Under the express terms of the rental agreement, DeGraff was the only legal operator of the rental car.

Further, the defendant knew that DeGraff had no authority to grant him possession of the car based upon the defendant's unsuccessful attempt to rent a car from Hertz at the same location only 40 minutes earlier. The defendant does not dispute that he enlisted DeGraff to lease the car so that the defendant could take possession of the car that Hertz was unwilling to lease to him. The defendant, in full awareness of these facts, took possession of the car and used it to transport illegal drugs across the country. We hold that the defendant had no reasonable expectation of privacy, thus, no standing to object to the search.

Our decision is supported by a line of federal district court cases which have been decided on similar facts. For example, in *United States v. Obregon*, 748 F.2d 1371 (10th Cir. 1984), a defendant was driving a rented car when he was stopped at a police roadblock. After the police discovered that the defendant was not named in the rental contract, the defendant gave his oral consent to a search which uncovered a quantity of illegal narcotics. The circuit court of appeals affirmed the decision of the district court holding that the defendant had not legitimate expectation of privacy and that the defendant's relationship to the rental car was "too attenuated" to support a claim of standing. *Obregon*, 748 F.2d at 1374.

Similarly, in *United States v. Boruff*, 909 F.2d 111 (5th Cir. 1990), a defendant driving a car rented by his girlfriend was stopped and the car was searched. The rental agreement provided that the girlfriend was the only authorized driver and prohibited the car from being used for

illegal purposes. In holding that the defendant had no reasonable expectation of privacy, the court explained that under the express terms of the rental agreement, the girlfriend was the only legal operator of the vehicle and that she had no authority to give control of the automobile to the defendant. Similar decisions were reached in *United States v. Jones*, 44 F.3d 860 (10th Cir. 1995), *United States v. Wellons*, 32 F.3d 117 (4th Cir. 1994), and *United States v. Roper*, 918 F.2d 885 (10th Cir. 1990).

Contrary to the defendant's assertion that these federal cases are "not well-reasoned," we find them persuasive. In an effort to distinguish the instant case, the defendant asserts that unlike the federal cases, he presented evidence at the suppression hearing that DeGraff did not agree to the "no additional authorized operators" provision of the agreement. In support, he points out that DeGraff did not initial that provision of the rental agreement and testified that he would have refused to assent to it.

The defendant's argument is an effort to avoid the clear meaning of the rental agreement. Basic principles of contract hold that a person who signs a contract is agreeing to the terms in their entirety regardless of whether he makes a special indications on each individual provision. See generally *Leon v. Max E. Miller & Son*, 23 Ill. App. 3d 694, 320 N.E.2d 256 (1974). The scheme orchestrated by the defendant in this case was designed to circumvent Hertz' policies which required that lessees be in possession of a valid driver's license at the time of rental and all other operators to be authorized by the company.

As the primary authority supporting his contention of standing, the defendant cites *United States v. Kye Soo*

Lee, 898 F.2d 1034 (5th Cir. 1990). In that case, the court found that the permissive users of a rental truck did have standing to contest its search. Although neither the driver nor the passenger rented the truck, they informed the police that they had borrowed it from the person who rented it. The cargo hold of the truck was ultimately searched revealing contraband. The district court, applying factors similar to those enumerated in *Johnson*, found that the defendants had a legitimate possessory interest in the cargo hold because they had been given permission to use the truck by the renter.

In support of its decision, the court in *Kye Soo Lee* cited *United States v. Martinez*, 808 F.2d 1050, 1056 (5th Cir. 1987), for the general principle of bailment law which holds that where a person has borrowed an automobile from another, the borrower becomes a lawful possessor of the vehicle. *Kye Soo Lee*, 898 F.2d at 1038. Consequently, the defendant asserts that the primary issue in this case should be whether the defendant had the renter's permission to drive the car. However, unlike in *Kye Soo Lee*, we have the fact that the defendant knew that he did not have the owner's authority to operate and take possession of the car.

For similar reasons, we also find the defendant's analogy to "invited guest" cases misplaced. Specifically, the defendant points to cases in which invited guests have been found to have a reasonable expectation of privacy under certain circumstances. See *Jones v. United States*, 362 U.S. 257 (1960) (guest who had been given keys to an apartment and had slept there); *People v. Taylor*, 245 Ill. App. 3d 602, 614 N.E.2d 1272 (1993) (passenger traveling across country in owner-driver's car loaded with passen-

ger's luggage and personal effects); *People v. Olson*, 198 Ill. App. 3d 675, 556 N.E.2d 273 (1990) (unregistered guests in hotel room rented by their mother); *People v. Bookout*, 241 Ill. App. 3d 72, 608 N.E.2d 598 (1993) (unregistered guest in hotel who has been asked to leave by the management). The defendant argues that much like those cases, he was legitimately occupying the rental car, and thus, had standing to object to a search. The fatal distinction lies in the fact that the instant defendant was not, in fact, legitimately occupying the car because the defendant knew that DeGraff lacked authority from Hertz to give him possession of the car.

We hold that the entrustment by a lessee of a rental vehicle to a third party is sufficient to create a reasonable expectation of privacy in that third party where the third party knows the entrustment is without the authority of the vehicle's owner. Accordingly, the trial court properly dismissed the defendant's motion to suppress on the grounds that he lacked standing.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Whiteside County is affirmed.

Affirmed.

LYTTON, P.J., and MICHELA, J., concur.

App. 11

1ST CASE of Level 1 printed in FULL format.

People State of Illinois, respondent, v.
Harry Michael Bower, petitioner.

No. 84106

SUPREME COURT OF ILLINOIS

175 Ill. 2d 533; 689 N.E.2d 1141;
1997 Ill. LEXIS 1107; 228 Ill. Dec. 720

December 3, 1997, Decided

PRIOR HISTORY: [*1] Leave to appeal, Appellate Court, Third District. (3-96-0903).

OPINION: Petition for Leave to appeal denied.

(Letterhead of)

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
SPRINGFIELD 62701

February 17, 1998

Mr. Ralph E. Meczyk
Attorney at Law
111 W. Washington St., Suite 1625
Chicago, IL 60602

In re: People State of Illinois, respondent, v. Harry Michael Bower, petitioner. No. 84106

Dear Mr. Meczyk:

The following order today has been entered in the captioned case:

The motion by petitioner for leave to file a motion for reconsideration of the order denying petition for leave to appeal is denied.

Very truly yours,

/s/ Juleann Hornyak
Clerk of the Supreme Court

JH:lgr
cc: Mr. John Thomas Moran, Jr.
AG/CrRyan
SAAP/Ottawa

App. 13

(Filed April 3, 1998)

No. 84106

IN THE
SUPREME COURT OF ILLINOIS

People State of Illinois, Respondent	Petition for Leave to Appeal From Appellate Court Third District
v.	
Harry Michael Bower, Petitioner	3-96-0903

ORDER

This matter has come for consideration upon the motion of petitioner to recall and stay the mandate of this Court pending appeal or application for *certiorari* in the United States Supreme Court.

IT IS ORDERED that the mandate of this Court in the above cause is recalled and stayed pending the filing of a notice of appeal or an application for *certiorari* or the expiration of the period within which said application or notice may be filed. If *certiorari* is applied for or notice of appeal filed, the mandate of this Court shall, upon proof of such filing being made by affidavit filed with the clerk of this Court, be further stayed pending resolution by the United States Supreme Court of such application or appeal. If no such affidavit is filed, the mandate shall, without further order, issue upon the expiration of the time within which appeal or *certiorari* may be sought.

/s/ James D. Heiple

(*Letterhead of*)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

March 3, 1998

Mr. John T. Moran Jr.
309 W. Washington Street
Suite 900
Chicago, IL 60606

Re: Harry Michael Bower
v. Illinois
Application No. A-652

Dear Mr. Moran:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on March 3, 1998, extended the time to and including April 17, 1998.

This letter has been sent to those designated on the attached notification list. [Omitted in printing.]

Sincerely,

WILLIAM K. SUTER, Clerk

By /s/ Melissa A. Blalock

Melissa A. Blalock
Assistant Clerk